

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Regulations Governing the Gray Wolf in Minnesota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service issues a final rule governing the gray wolf in Minnesota that is identical to the final rule issued on August 10, 1983 (48 FR 36256), with certain exceptions that are required by orders of the United States District Court for the Minnesota District on January 5, 1984, and May 2, 1985. These orders require the Service to amend the August 10, 1983, regulations to:

1. Delete all references to public taking of wolves;
2. Require that the taking and killing of wolves under the depredation control program be performed in a humane manner;
3. Require the release of any young of the year that are taken on or before August 1 of that year; and
4. Prohibit sale or export in interstate or foreign commerce of gray wolves.

DATE: This rule is effective December 12, 1985.

FOR FURTHER INFORMATION CONTACT: John Spinks, Office of Endangered Species, Room 500 Broyhill Building, U.S. Fish and Wildlife Service, Washington DC 20240 (703) 235-2771.

SUPPLEMENTARY INFORMATION:**Background**

On July 14, 1982, the Service proposed to amend the special regulations governing the gray wolf in Minnesota

(47 FR 30528). The gray wolf is listed under the Endangered Species Act, 16 U.S.C. 1533, as threatened in Minnesota and endangered elsewhere in the 48 contiguous States (50 CFR 17.11). The Service proposed to allow a carefully controlled taking of wolves by the public and by designated State and Federal employees in certain areas of the State. The proposed amendment further would have authorized the sale in interstate and foreign commerce of wolf parts taken by the public. In addition, the amendment would modify the Service's existing wolf depredation control program by authorizing the taking of wolves within one-half mile of farms where depredation has occurred and by authorizing the killing of any wolf, including pups of the year.

Subsequent to a 60-day public comment period and public hearings in Minneapolis and International Falls, Minnesota, the Service modified the proposed amendment to clarify that wolves would not be taken in Wisconsin (except in response to depredation) and that no trade in live wolves would be authorized. The final rule was published in the *Federal Register* (48 FR 36256) on August 10, 1983. This rule contained extensive background discussion regarding wolf management in Minnesota, including a summary of comments submitted in response to the proposed gray wolf regulations and the Service's response thereto.

Several groups challenged the August 10, 1983, rule, alleging, among other things, that the Service could not authorize public taking of the threatened gray wolf without demonstrating that the taking was required to relieve population pressures among the wolves and that the Service had not explained its reasons for altering the existing program for controlling wolves that prey on domestic animals. The Service agreed with the plaintiffs to stay the effectiveness of the rule pending the outcome of the lawsuit. On January 5, 1984, the District granted the plaintiffs' motion for summary judgment, *Sierra Club and Defenders of Wildlife v. Clark*, 577 F. Supp. 783 (D. Minn. 1984), a ruling that was appealed by the Service. On February 19, 1985, the United States Court of Appeals for the Eighth Circuit affirmed the District Court's decision on public taking of the wolf but remanded for further consideration by the District Court the issue of whether the changes in depredation control had been adequately explained. *Sierra Club and Defenders of Wildlife v. Clark*, 755 F. 2d 608 (8th Cir. 1985).

After a hearing on May 2, 1985, upon the consent of the parties, the District

Court ordered the Service to amend the August 10, 1983, regulations to:

1. Require, with regard to the depredation control program, that any taking or killing of wolves be done in a humane manner and that any young of the year taken on or before August 1 of that year be released.

2. Prohibit sale or export in interstate or international commerce of Minnesota gray wolves.

The Service is, therefore, promulgating a revised final rule that incorporates the August 10, 1983, final rule with the exception of the changes that are required by the January 5, 1984, and May 2, 1985, court orders.

This revision does not change or redefine the five management zones and designated critical habitat as set forth in 50 CFR 17.40(d)(1).

National Environmental Policy Act

An environmental assessment was prepared in conjunction with the August 10, 1983, final rule, and the Fish and Wildlife Service determined that adoption of that rule was not a major Federal action that would significantly affect the quality of the human environment. The Service concludes that adoption of the revised final rule is likewise not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Determinations Under Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior determined that the August 10, 1983, final rule was not a major rule and did not require preparation of a regulatory analysis under Executive Order 12291. The Department also determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are discussed in detail in the Determination of Effects that was prepared by the Fish and Wildlife Service for the August 10, 1983, final rule. As the District Court ordered revision of this final rule requires deletion of a portion of that rule without significant change to the remainder, the Service concludes that the determinations under Executive Order 12291 and the Regulatory Flexibility Act for this revised rule are unchanged from those concluded for the August 10, 1983, final rule. This rule is published in final form without opportunity for further public comment and is made effective upon publication

because all changes in the August 10, 1983, final rule are mandated by a court order. Therefore, the Service finds that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective immediately.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, 50 CFR Part 17 is revised as follows:

1. The authority for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 98 Stat. 1411 (16 U.S.C. 1531, et seq.), unless otherwise noted.

§ 17.40 [Amended]

2. Section 17.40(d) paragraphs (2) and (3) are revised to read as shown below:
(d) * * *

(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a

gray wolf in Minnesota without a permit if such action is necessary to:

(1) Aid a sick, injured or orphaned specimen; or

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study.

(4) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(1) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: *Provided*, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: *And provided further*, that any young of the year taken on or before August 1 of that year must be released.

(C) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and Commercial Transactions.* Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) *Unlawfully Taken Wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means

whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Minnesota.

(3) *Permits.* All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

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Dated: October 25, 1985.

P. Daniel Smith,
Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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